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12 Attorneys for Plaintiff

13  
14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF ARIZONA

16 Equal Employment Opportunity }  
17 Commission, } Case 2:11-cv-01870-FJM  
18 Plaintiff, }  
19 vs. }  
20 Evening Entertainment Group, LLC }  
21 d/b/a Sandbar Mexican Grill, }  
22 Defendant. }

23 This discovery dispute arises in a pregnancy discrimination case brought under  
24 Title VII on behalf of Keli Kozup, a bartender, who, the EEOC alleges, was removed  
25 from the bartending schedule on Sundays because she was pregnant.

26 The EEOC moves to quash and/or seeks a protective order<sup>1</sup> to prohibit Defendant  
27 from obtaining records from three of Ms. Kozup's former employers in a situation nearly  
28 identical to the situation addressed by this Court in *Lewin v. Nackard Bottling Co.*, No.

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29  
30 <sup>1</sup> The parties were unable to resolve this discovery dispute after personal consultation and  
31 sincere effort pursuant to Local Rule 7.2(j) which involved both written correspondence  
32 and a phone call.

1 CV 10-8041-PCT-FJM, 2010 WL 4607402 (D. Ariz. 2010) (quashing overbroad  
 2 subpoenas for personnel files of former employers where subpoenas not reasonably  
 3 calculated to lead to the discovery of admissible evidence, and likely an impermissible  
 4 use of propensity evidence).  
 5

6 On May 3, 2012 Defendant subpoenaed three of Ms. Kozup's former employers  
 7 seeking Ms. Kozup's entire personnel file "and other records referencing or relating to"  
 8 Ms. Kozup's employment:  
 9

10 Please produce any and all personnel files and other records referencing or relating  
 11 to the employment or engagement of, or any services provided by, **Keli C. Kozup**  
 12 (**f/k/a Keli Mulholland** [personal identifying information redacted] including but  
 not limited to [six categories of information]. See Exhibit 1.

13 The EEOC moves to quash the subpoenas pursuant to Rule 45(c)(3)<sup>2</sup> and seeks a  
 14 protective order pursuant to 26(c)(1).<sup>3</sup> First, Sandbar's subpoenas are overbroad on their  
 15 face because Sandbar seeks all Ms. Kozup's employment records, including some records  
 16 while she was a minor. Second, records from Ms. Kozup's former employers are not  
 17 reasonably calculated to lead to the discovery of admissible evidence: (1) Ms. Kozup's  
 18 job performance is not at issue since Ms. Kozup had no performance warnings,  
 19 discipline, or poor performance reviews in her Sandbar personnel file; (2) the EEOC is  
 20

23 <sup>2</sup> The EEOC has standing to challenge the subpoenas because Ms. Kozup has a right to  
 24 protect the disclosure of her personnel files. *Richards v. Convergys Corp.*, Nos. 2:05-  
 25 CV-00790-DAK, 2:05-CV-00812 DAK, 2007 WL 474012, at \*1 (D.Utah 2007) (holding  
 26 that "[t]he court agrees with the reasoning of the courts that have found that a party has a  
 27 personal right in his employment records sufficient to confer standing.").

28 <sup>3</sup> The scope of permissible discovery of Rule 45 is the same as Rule 26. *Stewart v.*  
*Mitchell Transport*, No. 01-2546-JWL, 2002 WL 1558210, at \*3 (D.Kan. 2002) ("It is  
 well settled, however, that the scope of discovery under a subpoena is the same as the  
 scope of discovery under Rules 26(b) and 34.").

1 not seeking backpay following her employment at Sandbar; (3) Sandbar has not asserted  
2 any basis that Ms. Kozup misrepresented<sup>4</sup> anything regarding her prior employment; and  
3 (4) Sandbar has not alleged that Ms. Kozup engaged in any wrongful conduct that would  
4 have led to her discharge.  
5

6 The EEOC respectfully requests that Sandbar's overbroad subpoenas be quashed  
7 as an improper fishing expedition.  
8

9 DATED this 9th day of May 2012.  
10

11  
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13 Regional Attorney  
14

15 SALLY C. SHANLEY  
16 Supervisory Trial Attorney  
17

18 /s/ Christopher R. Houk  
19 CHRISTOPHER R. HOUK  
20 Trial Attorney  
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**CERTIFICATE OF SERVICE**

I certify that on this 9th day of May, 2012, the foregoing document was via electronic mail to:

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